

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	John A D'Andrea, Jr Debtor.	CASE NO.: 19-10865-elf
	SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of Chalet Series III Trust	CHAPTER 13
	Movant	JUDGE: Eric L. Frank
v.		HEARING DATE: November 3, 2020 at 9:30 am
	John A D'Andrea, Jr, Christina M. D'Andrea - Co-Debtor William C. Miller - Trustee Respondents.	OBJECTION DEADLINE: October 22, 2020

**MOTION FOR RELIEF FROM THE
AUTOMATIC STAY AND RELIEF FROM THE CO-DEBTOR STAY**

SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of Chalet Series III Trust (together with any successor and/or assign, “Movant”) hereby moves this Court for an Order (i) pursuant to 11 U.S.C. § 362(d)(1) and 11 U.S.C. §1301, vacating the automatic stay and co-debtor stay to permit Movant to enforce its mortgage on the Debtor’s premises located at 26 Cliff Road, Levittown, PA 19057 (the “Property”), (ii) modifying and terminating the Co-Debtor stay in effect pursuant to 11 U.S.C. 1301(a); and (iii) for such other and further relief as is just and proper. In support of this Motion, Movant respectfully states:

1. Movant is the holder of a Note executed by the Debtor, John A D’Andrea Jr dated May 30, 2007, whereby the Debtor promised to repay \$217,600.00 plus interest to Cardinal Financial Company (the “Original Lender”). To secure the repayment of the Note, the Debtor

and Christina M. D'Andrea (the "Co-Mortgagor") executed a Mortgage in favor of Mortgage Electronic Registration Systems, Inc. as nominee for Original Lender, encumbering the Property, which was recorded in Recorder of Deeds Office in Bucks County, Pennsylvania under Book 5439 Page 421 as Instrument No. 2007060441. The Debtor and Co-Debtor entered into a Loan Modification Agreement, effective April 1, 2012, that created a new principal balance of \$207,226.34. The Mortgage was ultimately assigned to Movant by an Assignment of Mortgage recorded on March 7, 2019. A copy of the Note, Mortgage, Loan Modification Agreement, and Assignments of Mortgage are attached hereto as **Exhibit A**.

2. A Petition under Chapter 13 of the United States Bankruptcy Code was filed with respect to the Debtor on February 11, 2019.

3. This Court has jurisdiction over this case and this motion pursuant to 28 U.S.C. §§ 157 and 1334.

4. Venue of this case and this motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The Debtor's Chapter 13 Plan was confirmed by an Order entered by this Court on August 13, 2019. The default on Movant's loan constitutes a default on the terms of the Confirmation Order.

6. The Debtor has failed to make current mortgage payments due to Movant under the terms of the Loan Modification Agreement. As a result, the Mortgage remains post-petition due for March 1, 2020.

7. Pursuant to 11 U.S.C. §362 (d)(1), the court shall enter an order granting a secured creditor relief from the automatic stay for cause "including the lack of adequate protection of an interest in property of such party and interest."

9. Specifically, courts have found cause for the granting of relief from an automatic stay where the debtor has failed to make post-petition mortgage payments as they become due. *In Re Michael Lancelot Taylor*, 151 B.R. 646,648 (Bankr. E.D.N.Y. 1993).

10. Movant may be irreparably harmed by the continuation of the Co-Debtor stay absent payments from the Debtor or Co-Debtor. Accordingly, the Co-Debtor stay should be modified pursuant to 11 U.S.C. § 1301(c)(3) and Movant should be permitted to proceed against the Co-Debtor.

11. Plaintiff incurred attorney's fees in the amount of \$850.00 and filing costs of \$181.00 in connection with filing and prosecuting of this motion for relief and seeks recovery of those amounts in order to cure the post-petition default.

12. Since grounds exist to vacate the stay in Debtor's case, Movant therefore requests that the automatic stay imposed under 11 U.S.C. § 362(a) and the Co-Debtor stay of Christina M. D'Andrea imposed under 11 U.S.C. § 1301 be modified and terminated for cause to permit Movant to pursue its rights under the Mortgage and applicable law, including without limitation, the commencement and consummation of a foreclosure action and/or eviction proceeding.

WHEREFORE, Movant respectfully requests an Order of this Court vacating the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1); modifying and terminating the Co-Debtor stay in effect pursuant to 11 U.S.C. 1301(a); and for such other, further and different relief as to this Court may deem just, proper and equitable.

Dated: October 8, 2020

By: /s/Lorraine Gazzara Doyle
Lorraine Gazzara Doyle, Esq.
FRIEDMAN VARTOLO LLP
Attorneys for Movant
1325 Franklin Avenue, Suite 230
Garden City, New York 11530
T: (212) 471-5100
F: (212) 471-5150
Bankruptcy@FriedmanVartolo.com